

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00431-BNB

JEFFREY DAVID SIZEMORE,

Plaintiff,

v.

OFFICER J. WILCOX,
OFFICER B. HANNA,
OFFICER P. TODD,
OFFICER SANDOVAL,
OFFICER WALK,
OFFICER GROW,
OFFICER SUDDOTH,
OFFICER MARTINEZ,
OFFICER TROUTMAN,
COUNSELOR LAW,
UNIT MANAGER G. LYDE,
NURSE MS. VINION [not sure of spelling],
PA-1 CAMACHO,
LT. HESS,
CAPT. KLEIN,
CAPT. BAUER, H[eath] S[ervices] A[dministrator],
A[SSOCIATE] W[ARDEN] VINEYARD,
WARDEN WILNER,
CASE MANAGER BIEKER,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

MAR 29 2010

GREGORY C. LANGHAM
CLERK

ORDER DISMISSING CASE

Plaintiff, Jeffrey David Sizemore, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the Federal Correctional Institution in Florence, Colorado. He filed *pro se* in the United States District Court for the District of New Mexico (District of New Mexico) a complaint for money damages in which he failed to allege jurisdiction. The District of New Mexico granted Mr. Sizemore leave to

proceed pursuant to 28 U.S.C. § 1915 without payment of an initial partial filing fee and transferred the case to this Court.

On March 3, 2010, Magistrate Judge Boyd N. Boland ordered Mr. Sizemore to show cause within twenty days why the instant action should not be dismissed. In the March 3 order, Magistrate Judge Boland noted that, but for one minor difference irrelevant here, the instant action appeared to be identical to **Sizemore v. Wilcox**, No. 10-cv-00366-BNB, in which the Court on March 1, 2010, ordered Mr. Sizemore to file an amended complaint within thirty days.

On March 17, 2010, Mr. Sizemore filed a document titled "Motion to Dismiss." The Court must construe the "Motion to Dismiss" liberally because Mr. Sizemore is a **pro se** litigant. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not act as a **pro se** litigant's advocate. **See Hall**, 935 F.2d at 1110. For the reasons stated below, the Court will construe the motion to dismiss as a notice of voluntary dismissal pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

Rule 41(a)(1) provides that "the plaintiff may dismiss an action without a court order by filing (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." No answer or motion for summary judgment has been filed by Defendants in this action. A voluntary dismissal pursuant to Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. **See** J. Moore, Moore's Federal Practice ¶ 41.02(2) (2d ed. 1995); **Hyde Constr. Co. v. Koehring Co.**, 388 F.2d 501, 507 (10th

Cir. 1968). The notice closes the file. **See Hyde Constr. Co.**, 388 F.2d at 507.

Accordingly, it is

ORDERED that the document titled "Motion to Dismiss" filed on March 17, 2010, is construed liberally as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1). It is

FURTHER ORDERED that the voluntary dismissal is effective as of March 17, 2010, the date the notice of voluntary dismissal was filed in this action. It is

FURTHER ORDERED that the complaint and the action are dismissed without prejudice.

DATED at Denver, Colorado, this 29th day of March, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No.10-cv-00431-BNB

Jeffrey D. Sizemore
Reg No. 31807-051
FCI Florence
P.O. Box 6000
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 3/29/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk